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Letter dated 30 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/448). The Counter-Terrorism Committee has received the attached third report from Uruguay submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 9 February 2004 from the Permanent Representative of Uruguay to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to refer to your communication dated 4 April 2003, in which you request additional information concerning measures adopted by Uruguay in application of resolution 1373 (2001), together with questions relating to the assistance and guidelines required in order to implement the resolution.

I am therefore happy to enclose Uruguay's report in response to your request. Please note that the numbering of the replies corresponds to the numbering of the questions (see enclosure).

(*Signed*) Felipe H. **Paolillo**
Ambassador
Permanent Representative of Uruguay to the United Nations

Enclosure

Replies

1.2 Article 71 of Decree-Law No. 14.294 of 31 October 1974, which was incorporated by article 5 of Act No. 17.016, states that all natural or juridical persons subject to supervision by the Central Bank of Uruguay are required to meet the regulations laid down by the executive branch or the Central Bank concerning the prevention of money-laundering.

Thus, Circular No. 1722, issued by the Central Bank on 21 December 2000, imposes on institutions or enterprises engaging in financial intermediation — investment banks, bureaux de change, insurance companies, savings-trusts administrators, stock exchanges, stockbrokers and other brokers and investment fund administrators — the obligation to report suspicious transactions.

In a separate development, a bill is being drafted on the strengthening of the system for the prevention and control of money-laundering and the financing of terrorism. It expands the number of entities required to report suspicious transactions to include enterprises providing money transfer services, lawyers, notaries, accountants and other natural or juridical persons engaging in financial operations or participating in the administration of companies for or on behalf of third parties.

In Uruguay, the official transfer and/or dispatch of money is carried out by bureaux de change, whose activities are subject to monitoring and supervision by the Central Bank. It was, nonetheless, deemed advisable to provide explicitly in the bill that enterprises providing such services should have the obligation to report. Otherwise, such operations could remain unregulated in cases in which the service in question was developed by entities not connected with the exchange market, since such activities are not prohibited by law.

1.3 Under existing legislation, the obligation to report transactions pertaining to criminal activities relates only to money-laundering, and terrorism may be among the criminal activities involved. The bill referred to above extends that obligation, however, to include a reporting requirement aimed at preventing the financing of terrorism.

Operations that, in relation to the habits and customs of the activity concerned, are unusual, have no obvious economic or legal justification or are of exceptional or unjustified complexity must be reported. The same applies to financial transactions involving assets whose provenance arouses suspicions of illegality.

With regard to the criteria for determining transactions that must be reported, Communication No. 2002/198 of 4 November 2002, issued by the Central Bank of Uruguay, contains guidelines on suspicious or unusual operations, the purpose being to work with entities having the obligation to report to detect suspicious or unusual patterns in the behaviour of their regular or occasional customers. These guidelines set out a list of various types or patterns of financial transactions that may be linked with transactions intended to legitimize assets arising out of criminal activities.

1.4 No official audits of civil organizations or charities were carried out in the course of monitoring, owing to the lack of adequate infrastructure or personnel for such activities. Monitoring is conducted by means of the company documentation

that institutions are obliged to maintain in accordance with the instructions issued for that purpose. All that such monitoring can do is to note that an institution's activities correspond with the regulations governing it or, in case of complaint, to check its non-compliance.

With regard to non-profit-making civil organizations, whose activities are governed by Decree Law No. 15.089 of 12 December 1980, audits are conducted in cases where applications are submitted for approval of regulations, reform of regulations or complaints concerning breaches of regulations.

The monitoring of charities is governed by articles 24 ff of Act No. 17.163 of 1 September 1999, which is concerned with the supervision of the accounting practised by such institutions. The fact remains, however, that the country lacks suitable staff who would be able to scrutinize their economic and financial movements adequately.

1.5 As mentioned in the reply to question 1.2, official money transfer and/or dispatch services are provided in Uruguay by bureaux de change, which are monitored and supervised by the Central Bank.

In addition to that, the bill on strengthening the system for the prevention and control of money-laundering and the financing of terrorism imposes on enterprises providing money transfer services the obligation to report suspicious transactions.

1.6 The bill on strengthening the system for the prevention and control of money-laundering and the financing of terrorism makes it an offence to organize or finance activities of a terrorist nature, even where such activities are conducted outside the national territory. It also criminalizes the collection of funds in the knowledge that they are intended to finance such activities. In view of the nature of such offences, the punishment corresponds to their magnitude, in accordance with the scale of offences laid down in the Penal Code. The licit or illicit origin of funds obtained in pursuit of an illicit aim is irrelevant for the purpose of characterizing the offence.

1.7 The bill lays down a procedure for freezing assets belonging to terrorist organizations or persons connected with them, in accordance with the provisions of article 18 of the International Convention for the Suppression of the Financing of Terrorism and article 5 of the Inter-American Convention against Terrorism. It is also in line with the provisions of Security Council resolution 1373 (2001). The provision proposed for that purpose involves a flexible procedure for reporting suspicious transactions to the Information and Financial Analysis Unit of the Central Bank of Uruguay, which will have the power to order the temporary freezing of bank accounts, while retaining the necessary guarantees whereby the specific competence to try a case is assigned to the relevant court. General legislation on precautionary measures in criminal cases shall apply in this instance.

1.8 Article 150 of the Penal Code makes it a criminal offence to engage in association to commit any kind of crime; and the law makes no distinction between an illegal activity committed within the country or abroad. On the basis of the general principle that, if he who makes the law draws no distinction, neither should he who interprets it, it may be categorically concluded that the provision does not apply only to cases pertaining to the country's internal security. Moreover, the law is clear on this point, for it makes the "mere act of association" a punishable offence, whether or not the offence for which the association is formed is ultimately committed.

The legal experts and the courts in Uruguay are in complete agreement on this interpretation.

As for the possibility of criminally punishing a person who engages in recruitment without belonging to a criminal or terrorist organization, that situation is explicitly covered by the provision that it constitutes an aggravating factor of the offence of "association in order to commit a crime" under article 151 of the Penal Code, which makes it a punishable offence to participate as "head" or "instigator" (*promotor*). It is clearly possible for a person to be an instigator without, *stricto sensu*, being a member of a criminal organization. According to the dictionary of the Spanish Royal Academy, the Spanish word "*promotor*" is an adjective meaning "instigating or promoting something, carrying out the activities necessary for its fulfilment", while the word "*promover*" is a verb meaning "to initiate or advance a thing or a process in order to achieve its fulfilment" or "to take the initiative in order to carry out or achieve something".

The fact that recruitment is conducted by deception by no means rules out the criminal nature of the activity; on the contrary, it could, in addition to constituting the offence of association in order to commit a crime, amount to fraud (Penal Code, art. 347: "Any person who uses deceptive or fraudulent means to lead another person into error in order to procure for himself or a third person an unfair benefit to the detriment of another person ...").

1.9 With regard to the application of the principle of territoriality, the reference is to the situation in which an offence is committed in Uruguay. This principle applies without affecting the principles governing the rules of international legal cooperation, which is the context in which they should be interpreted.

1.10 The bill on strengthening the system for the prevention and control of money-laundering and the financing of terrorism aims to introduce a set of reforms with the purpose of making comprehensive improvements to the legal framework in which such activities take place. The submission of the bill to the legislature has been delayed pending approval by the Financial Action Task Force on Money Laundering (FATF) of the revised Forty Recommendations, so that the bill could incorporate their principles and thus improve the system overall. It is anticipated that the bill will be formally submitted in August of this year.

In summary form, the bill contains the following provisions.

(a) Wider range of entities covered by anti-money-laundering obligations.

(b) Exemption from liability of entities which, in good faith, report suspicious transactions.

(c) Stronger powers for the Information and Financial Analysis Unit.

(d) Increased number of offences leading up to money-laundering.

(e) Definition of the crimes of terrorism and the financing of terrorism.

(f) Improved mechanisms for international cooperation in combating money-laundering and the financing of terrorism.

1.11 As we stated in our response to paragraph 3 (d) of resolution 1373 (2001), Uruguay is party to the vast majority of the universal international and regional instruments relating to terrorism.

Following the events of September 2001, Uruguay ratified the International Convention for the Suppression of Terrorist Bombings, depositing the instrument of ratification on 10 November 2001. On 25 October 2001, it also signed the International Convention for the Suppression of the Financing of Terrorism, the parliamentary ratification of which is currently taking place in the Chamber of Deputies.

Uruguay is in the process of acceding to the Convention on the Physical Protection of Nuclear Material, on which a statement was sent to the General Assembly by the executive branch on 30 September 1997 and again on 31 October 2000. The accession is now at the report stage before the International Affairs Committee of the Chamber of Deputies.

With regard to the penalties provided for in our criminal law for the many definitions of offences contained in the conventions to which Uruguay is party, it should be pointed out that our criminal justice system gives the trial judge considerable discretion in determining punishment within the broad minimum and maximum limits prescribed by the applicable legal rule and the mitigating or aggravating circumstances provided for under our criminal legislation.

For example, in the case of public safety offences, the Penal Code provides for sentences ranging from 12 months' imprisonment to 16 years' rigorous imprisonment for arson and 12 months' imprisonment to 12 years' rigorous imprisonment for criminal destruction (*estrago*), while an attempt on the life of the leader or representative of a foreign State is punished by four to 10 years' rigorous imprisonment, rising to 15 to 30 years where the attempt results in the death of the victim.

1.12 Uruguay has no further details to add concerning the requirements contained in Security Council resolutions 1267 (1999), 1390 (2002) and 1455 (2003).